
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**DEVELOPERS SURETY AND
INDEMNITY COMPANY,**

Plaintiff,

v.

**BOSWELL-OLSEN ENTERPRISES,
INC., ET AL.,**

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:12CV367DAK

Judge Dale A. Kimball

This matter is before the court on the following motions: (1) Plaintiff's Motion for Summary Judgment Against Mark H. Olsen and Clint Boswell; (2) Plaintiff's Motion for Summary Judgment Against Shane Lamb; (3) Plaintiff's Motion for Discovery Sanctions Against Shane Lamb; and (4) Defendant Shane Lamb's Motion for Summary Judgment. The court had scheduled a hearing on the motions for December 15, 2015. However, based on the following Order, the court VACATES the December 15, 2015 hearing.

A. Motions Relating to Defendant Shane Lamb

Plaintiff's Motion for Discovery Sanctions against Defendant Shane Lamb is based on Lamb's failure to appear at a scheduled deposition. Lamb, however, contends that his failure to appear was the result of a misunderstanding between counsel as to when the deposition would be rescheduled. Rather than attempt to reschedule the deposition, Plaintiff filed the motion for sanctions. Because of the misunderstanding as to the rescheduling of the deposition and the lack

of attempt to reschedule, the court finds no basis for sanctioning Lamb. However, after reviewing Plaintiff's and Lamb's cross motions for summary judgment, the court concludes that Lamb's deposition is necessary for proper resolution of the motions for summary judgment. Lamb's failure to appear at a deposition should not give him the advantage of submitting a self-serving declaration to be considered by the court when Plaintiff scheduled a deposition but did not have the opportunity to depose him and subject his testimony to questioning. Therefore, the court denies Plaintiff's request for sanctions but orders Plaintiff and Lamb to schedule and conduct Lamb's deposition within 30 days of the date of this Order.

Because the court cannot rule on the pending cross motions for summary judgment prior to Lamb's deposition, the court denies the motions without prejudice at this time. Within 20 days of the date of Lamb's deposition, each party shall submit a supplement brief in support of their motion for summary judgment. Each party may then file a reply memorandum within fourteen days of the supplemental briefs. The court will reschedule a hearing on the cross motions for summary judgment to be held after the briefing is complete.

B. Motion for Summary Judgment Against Defendants Boswell and Olsen

Plaintiff's Motion for Summary Judgment against Clint Boswell and Mark H. Olsen was filed June 1, 2015. On August 26, 2015, the court issued an Order to Show Cause to Olsen and Boswell because of their failures to respond to the motion. Olsen never responded to the court's Order to Show Cause. On August 28, 2015, Boswell notified the court that he would file an opposition to the motion within 10 days. The court then extended Boswell's time to respond to September 25, 2015. Boswell, however, never filed an opposition to Plaintiff's Motion for Summary Judgment.

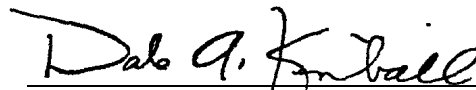
The parties have not indicated that any extensions have been granted or any settlement

has been reached. The court has already issued one Order to Show Cause notifying Boswell and Olsen that it will grant the motion if no opposition is filed. Based on their failure to oppose the motion, and for the reasons stated in Plaintiff's motion, the court GRANTS Plaintiff's Motion for Summary Judgment Against Clint Boswell and Mark H. Olsen.

Based on the above reasoning Plaintiff's Motion for Summary Judgment Against Mark H. Olsen and Clint Boswell [Docket No. 69] is GRANTED. Plaintiff's Motion for Discovery Sanctions Against Shane Lamb [Docket No. 72] is DENIED; however, Plaintiff and Lamb shall conduct Lamb's deposition within 30 days of the date of this Order. Plaintiff's Motion for Summary Judgment Against Shane Lamb [Docket No. 74] and Defendant Shane Lamb's Motion for Summary Judgment [Docket No. 89] are DENIED WITHOUT PREJUDICE at this time, to be renewed after the parties conduct Lamb's deposition. The December 15, 2015 hearing is VACATED.

DATED this 10th day of December, 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL

United States District Judge